

MEMORANDUM

April 2, 2010

To: The Honorable Tom Coburn
Attention: Roland R. Foster

From: Angela Napili, 7-0135
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Subject: News articles on federal coverage of erectile dysfunction drugs for sex offenders

This is in response to your request on whether there have been known cases in which federal health programs, such as Medicaid, provided convicted sex offenders coverage for drugs to treat erectile dysfunction.

As we discussed, we have placed an information request with the U.S. Department of Health and Human Services congressional liaison office. We will forward their response to you as soon as we receive it.

Also as we discussed, attached are news articles from a search of the Nexis.com “US Newspapers and Wires” database.¹ The articles are sorted chronologically. Note that this search is not comprehensive. There may have been cases that were not in the press, there may have been relevant news articles that were not in the Nexis database, and there may have been relevant news articles that did not contain our search terms in their headlines or lead paragraphs. Also note that CRS did not independently confirm any of the claims made in these articles.

The articles describe findings that some sex offenders received erectile dysfunction drugs through state Medicaid programs (which are jointly funded by state and federal governments).

All the articles that we found described cases in 2005 or earlier. On May 23, 2005, the federal Centers for Medicare and Medicaid Services sent a letter to state Medicaid directors, *Inappropriate Medicaid payments for drugs in the case of sex offenders (Viagra)*.² It stated that the use of impotence drugs by convicted sex offenders “is not appropriate and Medicaid should not pay for the cost of such drugs in such circumstances. Effective immediately, states should use their drug use review program and procedures

¹ We used the keywords *hlead((rape or rapist or molest! or offender or offense or crime or criminal or convict!) w/15 (viagra or sildenafil or vardenafil! or caverject or cialis or levitra or tadalafil)) OR hlead((rape or rapist or molest! or offender or offense or crime or criminal or convict!) w/15 (sexual! impoten! or erectile or sexual dysfunction) w/15 (drug! or pharm! or pill))*. “hlead” limits the search to the article headline and lead paragraph. “w/15” means “within 15 words of.” “!” is a truncator, so *convict!* finds the keywords *convicted*, *conviction*, etc.

² Letter from Dennis G. Smith, Director, Center for Medicaid and State Operations, Centers for Medicare & Medicaid Services, to State Medicaid Directors, *Inappropriate Medicaid payments for drugs in the case of sex offenders (Viagra)*, May 23, 2005, <http://www.cms.hhs.gov/smdl/downloads/smd052305.pdf>.

under 1927(g) of the Social Security Act and work with physicians and pharmacists to prevent inappropriate Medicaid payment for such drugs in the case of a sex offender. Failure to perform such a review and implement appropriate controls may result in sanctions.”

On October 20, 2005, P.L. 109-91 (the QI, TMA, and Abstinence Programs Extension and Hurricane Katrina Unemployment Relief Act of 2005) became law.³ This statute allows state Medicaid programs to exclude or restrict drug coverage of "Agents when used for the treatment of sexual or erectile dysfunction, unless such agents are used to treat a condition, other than sexual or erectile dysfunction, for which the agents have been approved by the Food and Drug Administration."⁴ The statute also forbids federal Medicaid payments for these drugs. That is, even if a state chooses to cover these drugs under Medicaid, the federal government would not help pay for it.⁵ These provisions apply to drugs dispensed on or after January 1, 2006.

Some of the news articles refer to findings from the California State Controller, the Florida Attorney General, the New York Comptroller, and the Texas Attorney General. Below are excerpts from the relevant state government websites:

California

From the State Controller's website, June 5, 2005:

State Controller Steve Westly today released figures from a preliminary review by his office that shows the drug Viagra has been provided to at least 50 registered sex offenders at the State's expense.

"This is alarming news," Controller Westly said. "Of the 50 direct matches to the California Registered Sex Offender Database, the overwhelming number are rapists and child molesters."

The review was for a 14-month period from March 1, 2004 to April 30, 2005. Auditors took a three-month sample during that same period, and found that Medi-Cal made payments to 4,300 beneficiaries for Viagra. Of that number, auditors found 50 exact matches in the Sex Offender Database.

Since this information only addresses a three-month sample period, the total number of California registered sex offenders who receive State-funded Viagra may be higher.⁶

Florida

From the Attorney General's website, May 27, 2005:

We determined that over the past four years, Medicaid had paid \$93,000 to buy erectile dysfunction drugs for 218 sex offenders.⁷

³ Sec. 104, 119 Stat. 2092, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ091.109.pdf#page=2

⁴ 42 USC § 1396r-8(d)(2)(K), also known as Social Security Act sec. 1927(d)(2)(K) http://www.ssa.gov/OP_Home/ssact/title19/1927.htm#act-1927-d-2

⁵ 42 USC 1396b(i)(21), also known as Social Security Act sec. 1903(i)(21) http://www.ssa.gov/OP_Home/ssact/title19/1903.htm#act-1903-i-21

⁶ Controller Steve Westly, State of California, "Controller Calls on Legislature to Prohibit Viagra to Sex Offenders," press release, June 3, 2005, <http://www.sco.ca.gov/Press-Releases/2005/viagra0603.pdf>.

⁷ Charlie Crist, "Message from Attorney General Charlie Crist," *News Briefs*, May 27, 2005, (continued...)

New York

From the State Comptroller's website, May 22, 2005:

During a review of Medicaid pharmacy expenditures, Comptroller's Office auditors discovered that some sex offenders were receiving Medicaid-reimbursed Viagra. The auditors matched the names of Level 3 sex offenders currently listed on the Subdirectory on the Internet with the names of individuals receiving Medicaid and specifically looked for individuals receiving Viagra.

The search found that, for the period January 1, 2000 through March 31, 2005, 198 Level 3 sex offenders received Medicaid-reimbursed Viagra after being convicted of a sexual offense. Among the crimes committed by these sex offenders were crimes with children as young as two years of age and a woman as old as 90 years of age and the crimes ranged from rape in the first degree to sexual touching.⁸

Texas

From Attorney General's website, May 24, 2005:

Texas Attorney General Greg Abbott today announced results of an initial investigation that nearly 200 registered sex offenders in Texas have obtained Viagra and other sex-enhancing drugs with Medicaid dollars.⁹

Below are additional excerpts from the attached news articles:

Alabama

From the *Huntsville Times*, May 27, 2005:

Alabama officials said only two sex offenders in the state had received Medicaid-reimbursed erectile dysfunction drugs in fiscal 2004.¹⁰

From the *Montgomery Advertiser*, June 8, 2005:

The state-federal health insurance program for the poor last budget year paid \$64,298 for erectile dysfunction drugs in Alabama; \$358 of that total was spent to reimburse two convicted sex offenders.¹¹

(...continued)

<http://www.myfloridalegal.com/NewsBrief/OnlineBrief/95D6E9611C9B5C3D8525700A005F5F97>.

⁸ Office of the New York State Comptroller, Alan G. Hevesi, "Hevesi Asks Feds to Change Policy After Finding 198 High-Risk Sex Offenders Receiving Viagra From Medicaid," press release, May 22, 2005, <http://www.osc.state.ny.us/press/releases/may05/052205.htm> and http://www.osc.state.ny.us/press/releases/may05/letter_viagra_52205.pdf.

⁹ Attorney General of Texas, Greg Abbott, "Nearly 200 Sex Offenders Receive Taxpayer-Funded Viagra, Attorney General Abbott Says," press release, May 24, 2005, <http://www.oag.state.tx.us/oagNews/release.php?id=993>.

¹⁰ "No Viagra for sex offenders, state says," *Huntsville Times*, May 27, 2005, p. 3B, 2 Edition.

¹¹ John Davis, "Medicaid stops impotence drug coverage," *The Montgomery Advertiser*, June 8, 2005, p. B-3.

California

From the *Associated Press State and Local Wire*, June 22, 2005:

California taxpayers helped cover the cost of Viagra and similar impotence drugs for at least 137 registered sex offenders during the past year, according to the Attorney General's office.

An audit by Attorney General Bill Lockyer found that Medi-Cal, which funds some health services programs for California's poor, spent \$2.6 million to provide 5,855 men with Viagra and other erectile dysfunction drugs in the past year, and that 137 were registered sex offenders, spokesman Nathan Barankin told The Associated Press...

Independent of Lockyer's audit, state Controller Steve Westly, a candidate for governor, compared the version of the sex offender registry that's available to the public on the Internet to Medi-Cal rolls, and found that during February, March and April of this year, 50 of the 4,300 Medi-Cal recipients receiving erectile dysfunction drugs, or about 1 percent, were registered sex offenders. Their drugs cost the state more than \$21,000, Westly said.¹²

Colorado

From the *Associated Press State and Local Wire*, June 14, 2005:

Colorado's Medicaid program spent \$2,000 supplying Viagra and other impotence drugs to five registered sex offenders, officials said Tuesday...

The state Department of Health Care Policy and Financing, which runs the Medicaid health insurance program for the poor, paid \$2,013 for Viagra and similar drugs for the five registered offenders from July 1, 2003, through March 31, spokeswoman Rhonda Bentz said.¹³

Georgia

From the *Atlanta Journal-Constitution*, June 8, 2005:

Georgia taxpayers spent more than a quarter-million dollars for erectile dysfunction drugs such as Viagra, Levitra and Cialis for 1,534 Medicaid recipients from April 2004 to May of this year. Five of the recipients were registered sex offenders.¹⁴

From the *Associated Press State and Local Wire*, May 26, 2005:

Georgia's Medicaid program shelled out taxpayer money to provide erectile dysfunction drugs like Viagra to three sex offenders during the last three months, the state acknowledged Thursday...

The three filled a total of five prescriptions over the 90 days at a cost to the taxpayers of \$1,259.86.¹⁵

¹² Kim Curtis, "State helped pay for Viagra for 137 registered sex offenders," *The Associated Press State & Local Wire*, June 22, 2005. A version of this article was also posted on the San Diego Union-Tribune website: http://legacy.signonsandiego.com/uniontrib/20050623/news_1n23viagra.html

¹³ Jon Sarche, "Colorado Medicaid paid for impotence drugs for five sex offenders," *The Associated Press State & Local Wire*, June 14, 2005.

¹⁴ Sonji Jacobs, "Perdue targets Viagra to poor; Governor says Medicaid should not pay for drug," *The Atlanta Journal-Constitution*, June 8, 2005, p. 1A, Home Edition.

Iowa

From the *Associated Press State and Local Wire*, June 1, 2005:

Three registered sex offenders in Iowa have been receiving Viagra through Medicaid, state officials said Wednesday.¹⁶

Kansas

From the *Associated Press State and Local Wire*, May 27, 2005:

Since 2000, 14 registered sex offenders in Kansas received Medicaid-paid drugs for impotence such as Viagra and four still are getting the medication, the Department of Social and Rehabilitation Services said Friday.

The payments cost the state \$2,087 since 2000, when Medicaid started paying for Viagra and other erectile dysfunction drugs, state officials said.¹⁷

Maine

From the *Bangor Daily News*, May 27, 2005:

[T]he Maine Department of Health and Human Resources revealed that of the 268 residents being reimbursed for Viagra through MaineCare, five are listed on the state's sex-offender registry.¹⁸

Michigan

From the *Associated Press State and Local Wire*, May 26, 2005:

Seven sex offenders in Michigan got their prescriptions for Viagra covered by Medicaid in the past six months, state officials said Thursday.¹⁹

Missouri

From the *Associated Press State and Local Wire*, May 25, 2005:

(...continued)

¹⁵ Dick Pettys, "AP NewsBreak: Sex offenders got Viagra drugs from state," *The Associated Press State & Local Wire*, May 26, 2005. A version of this article was also posted on the AccessNorthGa.com website: <http://new.accessnorthga.com/detail.php?n=145228>

¹⁶ "Three Iowa sex offenders receiving Medicaid paid Viagra," *The Associated Press State & Local Wire*, June 1, 2005.

¹⁷ Carl Manning, "SRS says 14 registered sex offenders got Medicaid-paid Viagra," *The Associated Press State & Local Wire*, May 25, 2005. A version of this article was also posted on the *Topeka Capital-Journal* website: http://cjonline.com/stories/052805/leg_v Viagra.shtml

¹⁸ Renee Ordway, "Bureaucrats rush to fix Viagra fiasco," *Bangor Daily News*, May 27, 2005.

¹⁹ Amy F. Bailey, "AP Newsbreak: State reports seven sex offenders on Medicaid got Viagra," *The Associated Press State & Local Wire*, May 26, 2005.

The state acknowledged Wednesday that it paid for Viagra and similar prescription medications for 26 registered sex offenders in the past year, costing the state and federal governments \$7,060 ...

Of the total \$7,060 in Medicaid funds spent on erectile medications for sex offenders in Missouri, \$1,977 came from state funds and the rest was federal money.²⁰

Montana

From the *Great Falls Tribune*, May 28, 2005:

Monday, the feds sent a letter to state Medicaid programs telling them they should not pay for impotency drugs for convicted sex offenders.

Chuck Hunter, administrator of the Health Resources Division of the state Department of Public Health and Human Services, said the state had checked records in response to the stories, and discovered three individuals "who did meet that profile" and received ED medication in the past 2 years, at a total cost to taxpayers of \$178. As of Wednesday, steps have been taken to halt the practice, he said.²¹

New Hampshire

From the *Associated Press State and Local Wire*, June 1, 2005:

The state has stopped supplying a convicted sex offender with Viagra, according to the state Department of Health and Human Services...

State officials said Medicaid had been covering the cost of the drug for one of the 45 registered sex offenders in Nashua but that benefit has been cut off.²²

New Jersey

From the *Associated Press State and Local Wire*, May 26, 2005:

More than one-quarter of New Jersey's sex offenders considered most likely to commit their crimes again received state-funded Viagra, state officials said Thursday.

According to data released the Department of Human Services, New Jersey paid for erectile dysfunction drugs for 55 high risk sex offenders over the past year and a half at a total cost between \$12,000 and \$15,000.²³

From the *Star-Ledger*, May 25, 2005:

²⁰ Kelly Wiese, "State says it paid for Viagra for sex offenders," *The Associated Press State & Local Wire*, May 25, 2005. A version of this article was also posted on the *Southeast Missourian* website: <http://www.semissourian.com/story/163172.html>

²¹ "The Edge," *Great Falls Tribune*, May 28, 2005, p. 4A.

²² "N.H. news in brief; Medicaid Viagra," *The Associated Press State & Local Wire*, June 1, 2005.

²³ Bonnie Pfister, "One-fourth of NJ's worst paroled sex offenders got Viagra," *The Associated Press State & Local Wire*, May 26, 2005.

State prescription programs paid for Viagra or similar drugs for 55 of New Jersey's most dangerous sex offenders over the last 18 months, and officials said yesterday they plan to put a stop to that.

Taxpayers paid about \$12,200 for erectile dysfunction drugs for men who are classified under Megan's Law as among the most likely to commit further sex crimes, state Department of Human Services spokesman Ed Rogan confirmed...

A survey by the Department of Human Services and the Department of Health and Senior Services determined that 30 of the offenders obtained their prescriptions through public welfare; 22 through Medicaid or FamilyCare, state and federally funded health insurance programs aimed at the poor; and three through the Pharmaceutical Assistance to the Aged and Disabled program or Senior Gold program, geared to low- and moderate- income elderly and disabled people, Rogan said.²⁴

New York

From the *New York Sun*, May 23, 2005:

State Medicaid recipients received 358,000 Viagra prescriptions in 2004 for a cost of \$21.3 million, according to the comptroller's office. Mr. Hevesi estimated that the 198 sexual offenders accounted for \$85,000 of that.²⁵

From *UPI*, June 28, 2006:

A New York man convicted of multiple rapes was given a 50-year prison sentence as the court found out he was given taxpayer-provided Viagra.

Leroy Johnson was sentenced to the maximum number of years in prison Tuesday by Manhattan Supreme Court Justice Renee White for the 1996 rape of two roommates in Greenwich Village.

Johnson's attorney, Bryan Konoski, argued his client had mental problems, said Johnson's parents both had drug problems and pointed out that Johnson was prescribed five psychotropic drugs, as well as Viagra, last year, the New York Daily News reports. Because Johnson was on Medicaid, all the prescriptions [were] paid for with tax dollars, the Daily News said.²⁶

North Carolina

From the *News & Observer*, June 15, 2005:

The state has stopped paying for Viagra and other drugs that treat erectile dysfunction after finding that 15 convicted sex offenders received the pills through Medicaid.²⁷

From the *Associated Press State and Local Wire*, June 14, 2005:

²⁴ Susan K. Livio, "Sex offenders to stop getting Viagra fun," *The Star-Ledger*, May 27, 2005, p. 1.

²⁵ Jill Gardiner, "U.S. Providing Viagra for Sex Offenders," *The New York Sun*, May 23, 2005, p. 1.

²⁶ "Serial rapist was prescribed Viagra," *UPI*, June 28, 2006, http://www.upi.com/Top_News/2006/06/28/Serial-rapist-was-prescribed-Viagra/UPI-16781151529256/. The original *Daily News* article was Barbara Ross and Bill Hutchinson, "Top Gun' Rapist Given 50 Years, Despite Lawyer's Viagra Defense," *Daily News*, June 28, 2006, http://www.nydailynews.com/archives/news/2006/06/28/2006-06-28__top_gun__rapist_given_50_ye.html.

²⁷ Amy Gardner, "Medicaid coverage of Viagra halted; Sex offenders' use gives state pause," *The News & Observer*, June 15, 2005, p. A1, Final Edition.

The 15 sex offenders' prescriptions cost \$326 in Medicaid money during April, according to Nilsen. The state funds about one-third of those costs.²⁸

North Dakota

From the *Associated Press State and Local Wire*, May 26, 2005:

Since January 2004, North Dakota records show one Viagra prescription for a sex offender, said David Zentner, the state's Medicaid director. The prescription, which was written by the offender's doctor, was filled last January.

The names of Medicaid recipients are confidential, and Zentner declined to say where the prescription was filled. It cost \$59.02 ...

The one person who got a Viagra prescription was listed as a moderate risk to commit another sex crime.²⁹

Ohio

From the *Associated Press State and Local Wire*, May 26, 2005:

State officials acknowledged Thursday that Ohio paid for Viagra and another drug to treat impotence for 13 convicted sex offenders in the last 14 months.

The state discovered the issue after running a cross check of Ohio's 13,000-person sex offender registry with a database of Medicaid beneficiaries...

Ohio spent \$3,968 on impotence drugs for those 13 sex offenders.³⁰

Texas

From the *Associated Press State and Local Wire*, May 27, 2005:

Two Texas sex offenders who received Viagra or other erectile-dysfunction drugs through Medicaid committed new sex crimes and five more are wanted on various parole violations, state Attorney General Greg Abbott said Friday.

Abbott's weeklong investigation has found 191 registered sex offenders from 60 counties obtained sex-enhancing drugs through Medicaid since 1999. Medicaid is the state and federally funded health care program for the poor.

Of the sex offenders who received prescriptions, at least 128 were convicted for sex crimes against children. Ages for seven of the victims were not known, Abbott said.³¹

²⁸ "N.C. halts Medicaid prescriptions for Viagra, similar drugs," *The Associated Press State & Local Wire*, June 14, 2005.

²⁹ Dale Wetzel, "ND sex offender issued Medicaid prescription for Viagra," *The Associated Press State & Local Wire*, May 26, 2005.

³⁰ "State says it paid for Viagra for sex offenders," *The Associated Press State & Local Wire*, May 26, 2005.

³¹ "Two committed new sex crimes, five are fugitives," *Associated Press State & Local Wire*, May 27, 2005. A version of this article was also posted on the *Lubbock Online* website: http://www.lubbockonline.com/stories/052805/sta_0528050104.shtml

From the *Austin American-Statesman*, May 28, 2005:

At least two of the 191 registered sex offenders who received sex-enhancing drugs at taxpayer expense committed new sex crimes after they were prescribed the medication, state officials confirmed Friday. In all, they said, taxpayers spent \$134,732 in six years to supply the sex offenders with Viagra and other erectile-dysfunction drugs, including \$8,115 for six in Austin.³²

Utah

From the *Salt Lake Tribune*, June 30, 2005:

Twenty-four registered sex offenders received Viagra or other erectile dysfunction drugs in the past six years through Utah's taxpayer-funded Medicaid program.

From 1999 to 2005, the state filled a total of 148 prescriptions for those individuals at an average cost of \$ 45 each, bringing the total price tag to \$ 6,660, according to a recent cross-check of Utah's sex offender registry against Medicaid drug expenditures.³³

Virginia

From the *Associated Press State and Local Wire*, May 26, 2005:

Medicaid in 2004 paid for Viagra and other prescription impotence remedies for 52 men registered as violent sex offenders in Virginia, a state official said Thursday...

The cost of the drugs was at least \$3,085, said Patrick Finnerty, director of the state's Department of Medical Assistance Services. That does not include prescriptions for a few offenders who participated in managed care programs whose premiums are paid through Medicaid.³⁴

West Virginia

From the *Associated Press State and Local Wire*, June 9, 2005:

West Virginia's Medicaid program will no longer pay for impotence drugs for convicted sex offenders, the state Department of Health and Human Resources said Thursday.

The DHHR said it spent about \$5,000 in Medicaid funds to supply 15 sex offenders with Viagra or other impotence drugs since 1998. That information was based on a DHHR comparison of its paid pharmacy database and the State Police sex offender database.³⁵

³² Mike Ward, "Two sex offenders struck again after getting Viagra; State moves to ban Medicaid claims for sex-enhancing drugs," *Austin American-Statesman*, May 28, 2005, p. B6.

³³ Kirsten Stewart, "No more Viagra for sex offenders; Medicaid won't pay: A new required screening will sort out who can and can't fill prescriptions on the state's dime; Medicaid stops Viagra for sex offenders," *Salt Lake Tribune*, June 30, 2005, p. B1.

³⁴ Bob Lewis, "Medicaid paid Viagra bills for 52 Va. sex offenders in '04," *The Associated Press State & Local Wire*, May 26, 2005.

³⁵ "W.Va. halts Medicaid-funded impotence drugs for sex offenders," *The Associated Press State & Local Wire*, June 9, 2005.

Multi-state

From the *Associated Press*, May 28, 2005:

Nearly 800 convicted sex offenders in 14 states got Medicaid-funded prescriptions for Viagra and other impotence drugs, according to a survey by The Associated Press...

The states that provided registered sex offenders with subsidized impotence drugs are Florida, 218 cases; New York, 198; Texas, 191; New Jersey, 55; Virginia, 52; Missouri, 26; Kansas, 14; Ohio, 13; Michigan, seven; Maine, five; Georgia, three; Montana, three; Alabama, two; and North Dakota, one. That comes to 788 cases...

The time surveyed varied widely among the states, from six months to five years.³⁶

We hope this information is helpful to you. Please let us know if we can be of more assistance.

³⁶ Kevin Freking, "AP Enterprise: In 14 states, prescriptions for impotence drugs given to registered sex offenders," *Associated Press*, May 28, 2005. An edited version of this article was also posted on the *USA Today* website: http://www.usatoday.com/news/nation/2005-05-28-viagra-medicare_x.htm
